

A  
VINDICATION  
OF THE  
PRIVILEGE OF THE PEOPLE,  
IN RESPECT TO THE  
CONSTITUTIONAL RIGHT  
OF  
Free Discussion:  
WITH A  
RETROSPECT  
TO  
VARIOUS PROCEEDINGS,  
RELATIVE TO THE  
VIOLATIONS of that RIGHT.

*By George Chalmers Esq.*

"As every Englishman has an interest in our Constitution; so  
" 'tis every one's *duty* to defend it when attacked."

Lord Ch. J. WILLS.

Quod omnes tangit, ab omnibus tractari debet.

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VINDICATION

OF THE

PRINCIPLES OF THE PEOPLE

IN CHURCH AND STATE

CONSTITUTIONAL HISTORY

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# VINDICATION

OF THE

*PRIVILEGE OF THE PEOPLE.*

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§ 1. **T**HE transactions of the present times will necessarily fill several pages of our history. Therein will our children read an account of the events, which called out the energy of their fathers, unless by our inattention—

————— “ true liberty  
“ Be lost, which always with right reason dwells.”

§ 2. The narrative of occurrences, which having passed before our indignant eyes, we  
A 2 cannot

cannot doubt, will scarcely be believed by incredulous posterity. A king, the idol of a grateful people, insulted, and endangered, by miscreants, when performing the most popular of his functions: the measures, which necessity demanded, and wisdom approved, for protecting virtue from vice, and freedom from anarchy; for preventing the future rather than avenging the past, opposed by artifice, without doors, as inconsistent with constitutional rights: the privilege of free discussion assailed, within doors, by the same intriguers, during the same moment, that tumult was incited by them without, on the pretence of an attack on the same privilege of free discussion!—Such are the events, which our children will not credit, unless they recollect with Judge Foster, “ That the leaders of faction never blush, while the herd seldom think.”

§ 3. Yet are the facts recorded. The causes, which produced those effects, will appear inexplicable to succeeding generations, without more accurate information, than contemporaneous history affords from party notices. They may find, perhaps, in their own Shakspeare, whose genius pervades both space and time, the

the actors pourtrayed, and the scene embodied :

- “ 'Tis said, this town is full of cozenage,  
 “ *Disguised cheaters, prating mountebanks,*  
 “ And many such libertines of sin.”

§ 4. Such causes are, indeed, adequate to such effects. A great town, full of cozenage, is the proper scene for *disguised cheaters* to fan faction into tumult, and inflame tumult into treason. The eye, melting with pity for the miseries and crimes of man, turns away from the loathed example of Paris, during late revolutions. Our own history has recorded sufficient events, which demonstrate how often *prating mountebanks* have contrived plots against our liberties and laws ; yet accused the innocent objects of their circumvention, as the real authors of their own machinations. The *popish plot* is a memorable example of political imposture, which ought to be blotted from our annals, says Hume, if it did not form a luminous beacon for other times.—Practising on the credulity of mankind, the LIBERTINES propagate imputations, and inculcate falsehoods ; because they know, that a political lie, if it be believed for a day, often produces important consequences ; the death of monarchs, or the fall of states.

§ 5. The same causes have produced other events, which, though less striking in their appearances, have been equally dangerous in their effects. Popular assemblies, the natural guardians of popular privileges, have been made by factious orators instruments of attacks on the rights of the people. For satisfactory proofs, we need only refer to the parliamentary proceedings of the year 1680, on the renovated subject of petitioning and counter-petitioning. Petitioners were then solicited with great zeal; but counter-petitioners were punished with unexampled severity; as if the right of counter-petitioning were not equally constitutional as the right of petitioning.\* Yet, is it consoling to recol-

\* The story is admirably told by Roger North, in his *Examen*. p. 460-2.—“ The effect of these harsh proceedings appeared in the case of Mr. Stowell, a gentleman of good family in Devonshire. He was foreman of a grand jury at Exeter, and presented to the judge of assize the grand jury’s address to his Majesty, in the tenor of an abhorrence. Upon naming him in the House of Commons for the leader of this abhorrence, (or counter-petition) he was ordered to be taken into the custody of the serjeant at arms; and the serjeant sent down his deputy to bring the gentleman up; but he would not submit to the arrest: for which he alledged, that he knew of no law for taking away his liberty, on account of what he did as a grand jurymen in a  
“ court



recollect, that the privileges of the people have triumphed, as often as they have been assailed, either by open attack, or indirect invasion :

“ ——— Thrice happy, if they know

“ Their happiness, and persevere upright.”

§ 6. Of the success of this perseverance in rectitude, *the case of the Middlesex election* is a well-known precedent. The Commons, in Parliament assembled, rejected Mr. Wilkes, though

“ court of justice sworn : whereupon the officer returned  
“ without his prey.”

Here was a momentous crisis : the grand inquest of the nation stood opposed by the grand jury of a county, upon a point of privilege and claim of constitutional right. From the precipice, to which they had been brought by factious orators, the representatives of the nation hobbled off as well as they could ; by resolving, that Stowell, who stood with arms in his hand, was sick ! Roger North concludes his curious history of this memorable event with an excellent moral :—“ The consequence  
“ of this proceeding may be a lesson to all powers, on  
“ whatsoever foot they are erected, that they take care  
“ to perform their duty, according to the intent of  
“ their institution : thereby making themselves useful,  
“ and not a terror to the people under them : for if in-  
“ stead of that, out of private regard they grow intem-  
“ perate, irregular, and injurious, they will lose ground,  
“ and at length be humbled.” See also Ralph’s History, vol. i. p. 513-17. for this interesting passage in the history of our liberties.

he had been chosen by a majority of the electors, on the pretence that, having been once expelled, he could not be again elected. The people claimed their privilege of chusing their own representative. The controversy was long continued by the able disquisitions of many writers; yet, neither motives of revenge, nor sense of right, induced the representatives to punish the authors, who disputed their pretensions. The time came, at length, when the privilege of the people was to triumph. On a day propitious to freedom, the representatives offered up their pretension, as a sacrifice, on the altar of liberty.\*

§ 7. If it were not too voluminous, it would be curious to shew, by examples, the successive vibrations of the balance, between the privileges of the people and the privileges of their repre-

\* "The 3d of May, 1782, a motion was made by Mr. Wilkes, for expunging from the Journals of the House, the famous resolution of the 7th of February, 1769, relative to the Middlesex election. Mr. Wilkes, after so long a succession of annual defeats, now triumphed at last; there being, on the division, Ayes 115, Noes 47. Both Mr. Fox and Lord North spoke and voted against the question!!" [*Dodley's Register*, 1782, p. 181.] In this coincidence of speaking and voting, we perceive the dawn of the *Coalition*, which soon beamed out in baneful influence.

sentatives,

sentatives, which often stand opposed to each other, on the litigated subjects of elections, petitions, and free discussion.

“ Such *precedents* are numberless ; we draw

“ Our right from custom ; custom is a law.”

§ 8. An example or two shall, however, be given ; for, *example* is a motive of a very prevailing force on the actions of men. If the attack on the right of election came from the *treasury bench*, an assault on the privilege of free discussion afterwards came from the *opposite bench*, where sits the *everlasting liberty o' servants out o' place*. Mister Fox, a *servant out o' place*, moved the prosecution of a pamphlet, entitled “ A Review of the principal Charges against Warren Hastings.” The author of *this Review*, it must be allowed, animadverted on the grand inquest of the country, when discharging an important, but invidious, duty, with more tartness than prudence would dictate, or justice allow. Such prosecutions, however, are generally called for, during times of perturbation, when the constitutional right of free discussion is too often sacrificed to zeal of privilege. Yet, happy is it, that intemperance is ever followed by regret :

————— Qui non moderabitur iræ  
Infectum volet esse, dolor quod suaserit et mens.



§ 9. Fortunate was it for the right of free discussion, that the shock of this prosecution was to be sustained by Mr. Stockdale, the publisher, whose firmness could not easily be shaken, and whose prudence could not happily be surpassed. The 9th of December, 1789, when this prosecution was decided in his favour, will ever be deemed sacred to freedom. A jury of Englishmen shewed, by their verdict, that they would only surrender the right of free printing with their last breath. The zeal, the ingenuity, the eloquence of Mr. Erskine, who pleaded the cause of prosecuted innocence, will be remembered, when his failings, personal and political, are forgotten.

§ 10. The acquittal of the seven bishops was not of greater importance than the verdict for Mr. Stockdale, if the result be considered. Several principles of law, which regard our mental rights, and which being pleaded by Mr. Erskine, were admitted by the Attorney-General, and recognised by the Lord Chief Justice, were finally established in favour of free discussion. And what was thus judicially settled, was thenceforward to be deemed as much as an act of parliament, the law of the land, which the Legislature alone can annul. As we know now more than we knew before, we are more enlightened ;



lightened ; and as we have now a security, which we had not before, from the settlement of those principles, we have a safe-guard for our intellectual rights, which we had not before. The law doctrine of libel has been in a continual progress of improvement, from its inchoate rudeness in the case *de libellis famosis*, which is reported by Coke,\* to the acquittal of Mr. Stockdale, when a happy change was established, under better auspices for our disquisitive privileges :

“ Qui metuens vivit, liber mihi non erit unquam.”

§ 11. It is at length acknowledged to be a maxim of English law, that the presentment of the grand inquest of the nation is nothing more in its efficacy, though different in its manner, than the finding of the grand jury of a county. The accused equally appears with every presumption of innocence, and makes his defence with every favourable indulgence. The judge is equally his advocate, to prevent any unfair advantage, and to state for him every principle of law, and every just construction from the comparison of passages ; to take off the gloss of eloquence, which might mislead weakness into

\* 5 Coke's Rep. 120.

error, and to apply the evidence of facts, which may repel the imputation of guilt.

§ 12. There was another principle, which is of great importance to the country; and which was zealously urged by Mr. Erskine, in defence of Mr. Stockdale, was little opposed by the Attorney General, and was silently acquiesced in by the Chief Justice;\* that when resolutions, or speeches of the representatives of the people in Parliament, are published, without their parliamentary animadversion, the individuals, who are thereby injured, acquire incidentally a right to defend themselves by similar publications. Self-defence, the first law of nature, seems to justify this reasoning. The candid character of the English people appears to assume this principle for its own. The progress, indeed, of the doctrine of libel, during the last thirty years, brings to recollection the profound saying of the late Lord Mansfield, when trying the causes of merchants at Guildhall: *this is not law yet*, said that penetrating judge; *but, it is growing to be law*. I will not warrant the reasoning of Mr. Erskine, on this

\* Mr. Stockdale's trial is published, and ought to be in every library, as its *Magna Charta*. See p 44-6—104—114-16.

head, to be law, in its whole extent ;—*but, it is growing to be law.* I will only subjoin a story of King James and two of his bishops :—“ His Majesty, one day at dinner, asked the bishops ; My Lords, cannot I take my subjects’ money, when I want it, without all this formality of Parliament ? Neil, the Bishop of Durham, readily answered ; God forbid, Sir, but you should ; you are the breath of our nostrils. Whereupon the King turned, and said to Andrews, the Bishop of Winchester, well, my Lord, what say you ? Sir, replied Andrews, I have no skill to judge of parliamentary cases. The King answered ; No put offs, my Lord, answer me presently. Then, Sir, said Andrews, I think it is lawful for you to take my brother Neil’s money ; *for he offers it.*”—The ingenuity of Mr. Erskine would not thank me for making the application.\*

§ 13. From the prosecution, the trial, and the acquittal, of Mr. Stockdale, we are natu-

\* This story, which is so characteristic of the parties, was first related by Waller, the poet, who heard it at Court, when he was young, and never forgot it. [*Dr. Johnson’s Life of Waller.*] It is also related in the Biographical Dictionary, Art. Andrews. Bishop Andrews, who was noted for his learning, virtue, and as it seemeth, for his wit, died in 1626, and was honoured by Milton with a latin elegy.



rally carried forward to another example of a still more recent animadversion on the constitutional right of free discussion, which I promised to lay before the reader; because it is very remarkable.

——— “ ’Twill be recorded for a *precedent*;

“ And many an error by the same *example*

“ Will rush into the State.”

§ 14. It will not be believed by our children, that *the London Corresponding Society* had influence enough to institute a prosecution for a libel against the chairman of the association for protecting liberty and property against republicans and levellers. Charles Yorke will furnish an adequate explanation in very accurate terms:

“ The heat of honest men being once raised,  
 “ and the cooler passions of artful men disseminated by a specious zeal for what lies not at  
 “ their hearts, the calm voice of reason and  
 “ the law finds no attention; and persons of  
 “ less understanding, incited by example, add  
 “ greatly to the weight of that clamour, which,  
 “ for a time, has ever been too strong for argument.”\* We may perceive clearly, from the reflection of this excellent mirror, the true causes

\* Confid. on the Law of Forf. p. 3.



of the prosecution, which is *recorded for a precedent*; and how many an error may, by this example, rush into the State.

§ 15. The meeting of the London Corresponding Society, at Copenhagen House, on the 26th of October, 1795, will be memorable in our annals. It was in a subsequent meeting of twenty thousand miscreants, at the same place, that Mr. Thelwall opened his speech, in the following words: "I am glad to announce to you, " that one of the members of the House of Commons, Mr. Sturt, member for Bridport, has " done us the honour of calling at the house " (Copenhagen-House) this morning, and " looked over and put his name to the petitions, " and declared, that he himself would present " the one to the House of Commons, at the bar " of that house."\* It is a fact, that Mr. Sturt did present the petition of the Copenhagen-

\* Some of the ill informed morning papers asserted, that Mr. Sturt had been at the meeting in the field: but, we see, from the declaration of Thelwall, that he was only in *Copenhagen-House* with the committee of managers, who concerted with him the presenting of their petition; as the result demonstrates: whether it were then concerted, that a complaint should be made against the chairman of the association against republicans and levellers, must be left to the establishment of time.

House meeting; it is a fact, that he did complain, at the same time, of a pamphlet, entitled, "THOUGHTS ON THE ENGLISH GOVERNMENT," as a breach of privilege.

§ 16. Of the privilege of Parliament, according to the law of Parliament, *the ORACLE* hath said, "That *ab omnibus quærenda est, a multis ignorata, a paucis cognita.*"\* What the Oracle has forborne to reveal, cannot now be revealed. As the privilege of Parliament is an emanation from the people, it will for ever be held sacred by the public voice; being of great importance to public liberty. To their representatives, when assembled in Parliament, it alone belongs, to check the impertinencies of speech, to determine breaches of privilege, to prevent incidentally every invasion of the rights of the people, on whatever pretence of violated usage, or factitious denunciation,

§ 17. When a complaint of libel is sent to another judicatory for determination, the question becomes a point of public discussion, like other matters of general concernment. The *Thoughts on the English Government* were not regarded as a *private libel*, since they contain

\* I Institute II.

nothing,

nothing, which reflects on *private individuals*. But, the complaint must be, that this pamphlet asperges the Parliament, with the criminal design of bringing the Parliament into contempt with the people. Now, this consideration leads us back to the rule, which was solemnly established on Mr. Stockdale's trial; and which thereby became as much the law of the land, as *Magna Charta*, and is as much a right of the people, as the *declaration of rights*. The law was stated by Mr. Erskine, admitted by the Attorney General, and allowed by the Chief Justice, in the following words: "That where an  
 " information charges a writing to be com-  
 " posed, or published, of, and concerning, the  
 " Commons of Great Britain, with an intent to  
 " bring that body into scandal and disgrace with  
 " the public, the author cannot be brought  
 " within the scope of such a charge, unless the  
 " jury, on examination and comparison of the  
 " whole matter, written or published, shall be  
 " satisfied, that the particular passages charged as  
 " criminal, when explained by the context,  
 " and considered as part of one entire work,  
 " were meant and intended by the author to vi-  
 " lify the House of Commons as a body, and  
 " written of, and concerning, them in Parliament  
 " assembled." The rule, which was thus



stated with great precision, as to the Commons in Parliament assembled, equally applies to an information, that may be filed against any publication, for aspersing the Parliament in general.

§ 18. I will not, like some critics, condemn without perusal, nor like some judges, sentence the author to the pillory, and the book to the flames, without consideration of its matter, or its meaning.

“ It is a judgment maim’d and most imperfect,  
 “ That will confess perfection ; yet, could err  
 “ Against all rules of nature !”

Having attentively read the *Thoughts on the English Government*, I will proceed, under the established right of public discussion, to submit my free opinions about them to the judgment of the reader. And, I do not think, that this pamphlet is written with much selection of matter, or with any happy choice of language, whatever may be its intention, or its criminality. It is plainly a work of no great effort, and is certainly a lucubration of no mighty mischief ; yet, of its *peccadillos*, even the Whig Club, with a little extension of its charity, might have thought with Milton, that they are  
 “ Evils, which our own misdeeds have wrought.”



§ 19. But, alas ! where are we to find perfection in tracts on the litigated subject of government ! If we look into our constitutional writers of the last age, we shall be told by Hume,\* “ that they are compositions, most “ despicable both for style and matter ;” specifying in his note, “ Rapin Thoyras, Locke, “ Sidney, Hoadley, &c.” Angels and ministers of grace defend us ! Why ; these are the very chiefs of the Whig writers, who are thus condemned *as most despicable, both for style and matter* ; yet have been extolled, he says, and propagated, and read, as if they had equalled the most celebrated remains of antiquity. In this extremity, shall we have recourse to Blackstone, which, having become, with the Bible, and Shakespeare, a family book, is read by our women and our children ? Of such a book, in such hands, it is to be lamented, that it should contain so much bad English, bad history, and bad law. Those only, who have drawn their philological knowledge at the pure fountain of Lowth, can perceive the grammatical faults of Blackstone. Of his historical failings, we may judge from what he says of the most memorable event in our annals. After

\* Hist. vol. viii. p. 313. The edit. 1778, with the author's last corrections and improvements.

invalidating the right of William, the Norman, to the Crown, from a pretended grant of *the Confessor*, which was in itself invalid, he says : “ William’s title, however, was altogether as good as Harold’s, he being a mere private subject.” Lord Lyttelton would have shown him, “ that Harold’s title arose from a parliamentary settlement.”\* Blackstone is not more happy in his notions of law and liberty, as the result of the Norman invasion. “ From the reign of Charles the Second, (wicked as it was) owing to the concurrence of happy circumstances, we may date not only the re-establishment of our church and monarchy, but also, *the complete restitution of English liberty*, for the first time, since its TOTAL ABOLITION at *the CONQUEST*.”† Yet, are these but specks on the sun, which prevent not the illumination of general excellence ! The quotations at the same time show, in a striking light, how few of the productions of the human intellect can stand the examination of critical prudery, much less resist the attacks of factious malevolence.

§ 20. It is, however, happy for the security of our persons, and fortunate for the privilege

\* Hist. of Hen. II.

† 4 Comment. 431.

of free discussion, that the distance is great between bad writing, and criminal writing; between the purpose to exercise a constitutional right, and the design to do ill. It is remarkable, that Blackstone, when treating formally on the *Rights of Englishmen*, says not a word about that sacred privilege of the mind, the privilege of thinking, writing, and printing: he does, indeed, take incidental notice of this essential right, when he treats of *libel* among the crimes; but, he here considers this constitutional privilege, as a mere exemption from punishment, rather than an absolute right. It is still more remarkable, that the *Declaration of Rights* is studiously silent on this important liberty, without which all other liberties are insecure. The fact is, *the Revolution* left us without *the liberty of the press*. The year 1694 ought to be celebrated by the *Association for the Free Press*, as one of the happiest in our annals: for, it was in 1694 that the representatives of the people in Parliament (to their honour) refused to continue any longer *the Act for Restraining the Press*. Then it was, that the *common law* right, the *Magna Charta* right of free thinking, of free writing, and of free publishing, was again engrafted on the *ancient stock*; whereon, being planted in a congenial soil, and cultivated by free hands, *the tree of Liberty* has since flourished luxuriantly;



putting forth every season, goodly branches, which, I trust, will never be *lopped off*. Contrary to what was thought by statesmen at *the Revolution*, Charles Yorke assures us, “ That the liberty of the press is as naturally fitted to the support of good government, as to the ruin of bad.”\*

§ 21. If it be a genuine maxim of English law, that every free mind may think freely, and every free hand may act freely, unless they be restrained by positive statute, it must be incontrovertible law, that since the epoch of 1694, every man, every woman, and every child, has an indubitable right to think, write, and print, freely. The late verdict for Mr. Stockdale was a fine illustration of that maxim, and a strong affirmation of this right. The proceedings of the grand inquest of the nation against Mr. Hastings had been *reviewed* with full as much petulance, as freedom could wish, or prudence could justify : yet, the jury acquitted the publisher ; proceeding probably on these satisfactory reasons :—1st, That the liberty of the press is a constitutional right of such essential importance to the freedom of the people, that it is not to be impugned on slight

\* Considerations on the Law of Forf. 4.



pretences ;—2dly, That the design of the author was, perhaps, to defend Mr. Hastings, rather than to malign his accusers ; and without considering, as the Chief Justice recommended, that it were better, in case of doubt, a hundred guilty men should escape, than one innocent man should suffer. Here, then, is a legal confirmation of a constitutional privilege. On some occasions, it is not only a *right*, but it is a *duty*, to write and print, when innocence is to be vindicated, or when freedom is to be defended.—“ As every Englishman has an interest in “ our constitution, so ’tis every one’s duty to defend it when attacked ;” said the Lord Chief Justice Wills.\* On this principle, the Chairman of the Association for protecting Liberty and Property against Republicans and Levellers, probably acted, when he published the *Thoughts on the English Government* ; thinking it, no doubt, to be his *duty* to defend the constitution against open attacks, and secret circumvention. The annals of the times evince, that he had sufficient cause for his circumspection, and pressing spurs to his duty.

\* See the *Present Constitution, and the Protestant Succession Vindicated* ;—a pamphlet published by him, according to his own doctrine, in 1714.

§ 22. But, against the *right*, though not the *duty*, it may be objected, that the *liberty of the press*, which no real patriot will question, ought not to be extended beyond all bounds: the constitution ought not to be libelled, under the pretence of defending it. From *nature* every one has the gift of speech; but this doth not give any one a right to speak blasphemy against God, treason against the king, or evil of dignities: from the constitution, every one has a right to publish what he may think fit to write; but this does not give any one a right to lampoon the constitution in church or state, to asperse the parliament, or to satirize the representatives of the people, so as to bring them into contempt with their constituents. From the law of the land, all persons have the invaluable privilege of meeting to consider of their grievances, and to petition for redress; but this freedom does not give any persons authority to commit treason, felony, or breach of the peace; to insult the King, on pretence of petitioning, or to overawe the Parliament, as a means of redress: the objection, then, is, that all *rights* may, by abuse, be converted into *wrongs*.

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“ Little knows

“ Any, but God alone, to value right

“ The good before him, but perverts best things

“ To worst abuse, or to their meanest use.”

§ 23. These considerations lead us forward to the true question ; whether the publisher of *Thoughts on the English Government* has known to value right the good before him, or has perverted the best thing to the worst abuse ?

§ 24. If the point of the objection to this pamphlet be, that it was written, and published, with the wicked design of bringing the constitution into the contempt of the country, and the parliament into the hatred of the people, the first question ought to be, Who is the publisher ? that we may judge of his *motive* from his *character*. The publisher is said to be *The Chairman of the Association for defending the Constitution against Republicans and Levellers*. He, who has been acting for years in defence of the constitution, now comes out to defame the constitution. And, the tens of thousands, whom he has been the means of associating, in the noble cause of supporting law, and invigorating magistracy, are now incited by him to contemn the constitution, and to deride magistracy. Miracles have not yet ceased ; as this objection evinces ; though

“ ——— Nothing almost sees miracles

“ But misery !—



§ 25. Aye ; but there is a deep laid plot against the constitution, by the chief of the associators, in favour of the constitution ; he is openly for the constitution ; yet, is he secretly against it ; and he publishes the book with the apparent design of making the people content with their government and laws ; yet with the insidious purpose of making them condemn both. Such is the plot, which the breath of faction hath fanned into existence, and the voice of party hath proclaimed to the world ! Our recollection is thus carried back to the imputed plots of similar times. There is an instructive story,\* told by Roger North, of Lord Shaftesbury, the contriver of the *Popish plot* :—“ A  
 “ certain lord of his confidence in parliament  
 “ once asked him, what he intended to do with  
 “ *the plot*, which was so full of nonsense, as  
 “ would scarce go down with *tantum-non* ideots ;  
 “ what, then, could he propose by pressing the  
 “ belief of it upon men of common sense, and  
 “ especially in parliament ? It’s no matter, said  
 “ Shaftesbury, the more nonsensical the better ;  
 “ if we cannot make them swallow worse non-  
 “ sense than that, we shall never do any good  
 “ with them.” We need only change names, to make *the tale* apply as pertinently to the pre-

\* Examen, 95.



sent times, and to contemporary persons, as to the past.

§ 26. If we be determined not “to swallow  
“nonsense,” we may proceed with good temper  
to hear *the Chairman* speak for himself. He  
avowedly addresses his “Thoughts on the Eng-  
lish Government, to the *quiet good sense* of  
“the people of England.” The praises, which  
he bestows on their *good sense*, are plainly in-  
tended by him as salutary warnings against the  
popular delusions, that are politically useful to  
the Shaftesburys of every age. And, in the  
midst of those celebrations, he is studious to  
shew them, for their satisfaction, “that there  
“is more good sense in the laws and govern-  
“ment of England, than in those of other  
“countries, where the people do not possess  
“the same *useful sway*.” Yet, in opposition  
to positive proofs, shall we hear the Shaftesbury  
of the present times cry out, “I am no honest  
“man, if there be any good meaning towards  
“you.”

§ 27. Nay; how are we to judge of “good  
“meaning,” if we do not couple actions and  
declarations together; if we do not admit de-  
clarations as commentaries on actions, and actions  
as glosses upon declarations? It is not for man  
to

to be the searcher of the hearts of men ; and ; hence, the good sense of the English law has determined, that *overt acts* are the best proofs of the real purpose of the soul.\*

§ 28. Let us examine, then, the *overt acts* of our Chairman, as the *best proofs* of his real purpose. Let us, with this design, hear him, as he speaks out in page 8.—“ Above all things  
“ an Englishman loves *quiet*. How many vir-  
“ tues does this single disposition oblige him to  
“ practise ! It is from hence, that he is pa-  
“ tient and forbearing towards his governors ;  
“ not captious and wilful, but seeking the fairest  
“ construction of what they do ; ascribing to  
“ them the same honest intention, which he  
“ feels in his own mind. And, should his jea-  
“ lousy once be excited, he will bear and for-  
“ bear for a time, still hoping that things may  
“ mend. He knows the value of what he pos-  
“ sesses better, than lightly, or hastily, to wish  
“ for a change, and he dreads every change

\* It was humanely, as well as wisely, said, by the Lord Chief Justice, on the trial of Mr. Stockdale, “ It  
“ belongs to the great Searcher of hearts to know, whe-  
“ ther men are innocent or not ; we are to judge of the  
“ guilt, or innocence of men, (because we have no other  
“ rule to go by) by their overt acts ; by what they have  
“ done.” *Trial*, p. 114.

“ may

" may be for the worse. What storms and  
 " convulsions have been escaped, by the pre-  
 " valence of this love for *peace* and *quiet*. But  
 " the more immediate consequence of it is this,  
 " that its kindred quality GOOD SENSE has thus  
 " an interval left, to interpose its protecting in-  
 " fluence, and consider of such remedies as may  
 " seem suited to the nature of the existing evil.  
 " The English government is an organ of pub-  
 " lic union and activity, which is adapted to  
 " the humour and mode of thinking of those,  
 " who were witnesses to the formation of it,  
 " and who live under it. It appears to me,  
 " that we may discern in the whole disposition  
 " of it, the result of that constitution of mind,  
 " (*good sense*) which I have just ascribed to our  
 countrymen."\*

## § 29.

\* It is curious to remark, that Charles Yorke opens  
 his celebrated *Considerations* in almost similar language :—  
 " The people of England have ever entertained so high  
 " a veneration for their form of government, as to sub-  
 " mit to it with an acquiescence equal to that resolution,  
 " which they have shewn in the defence of it. To this  
 " felicity of temper and conduct, it is owing, that their  
 " groundless jealousies soon die away, when they find the  
 " ministers of state pursuing strictly the intention of the  
 " law, which is acknowledged, in every instance, to be  
 " the best rule, however opposite to transient opinions,  
 " or momentary wishes. The Prerogative itself, though  
 " in



§ 29. Such are the avowed declaration, and *overt act*, of our Chairman. If the only rule be, then, according to the Lord Chief Justice, to judge of men's *real intentions* by their *overt acts*, we have now satisfactory proof of the genuine design of the publisher of *Thoughts on the English Government*. He recommends *quiet* and *forbearance* to the English people, while he puts them in remembrance of their *useful sway*, and *final decision* in *public matters*. Nor, does he inculcate *passive obedience*; but hints, that the *good sense* of the country, though it discover itself in a *quiet way*, is very rarely without effect on the actors on the stage, whatever piece may be proposed. And he studiously advises forbearance towards governors, inculcates a reverence for government, and warns them of

“ in the ancient exercise scarce to be distinguished from  
 “ tyranny, yet circumscribed by that rule, has been  
 “ deemed of general advantage. These instances prove,  
 “ that, well knowing the wisdom of their ancestors in  
 “ modelling the constitution with an admirable equality,  
 “ the people were desirous to transmit it down to their  
 “ posterity, as a thing sacred and unalterable. In this,  
 “ they proceeded on the tenderest regard to the welfare  
 “ of the realm, and to a truth too often experienced in  
 “ our history, that when old foundations are weakened,  
 “ or land marks removed, though with plausible de-  
 “ signs to secure or extend liberty, the English subject  
 “ is the loser by every innovation.”

the



the dangers of change. Such are our Chairman's *intentions*, as witnessed by his *acts*. With equal truth, might we impute the odious design of aspersing the legislature, enfeebling magistracy, and vitiating the constitution, to Charles Yorke, who imbibed whiggism, and studied law, at *the foot* of GAMALIEL !

“ — Have you heard any imputation to the contrary ?

“ — No, no ; my meaning is to have you understand

“ me, that he is *sufficient*.

§ 30. From those considerations, with regard to *general intent*, we may safely deem our Chairman *sufficient*, without some other proof of criminal purpose, than loose talk, and indefinite charge. Yet, is it apparent, that he had not a plan, like Blackstone, to write *a system* of the English constitution. He only meant to utter *Thoughts on the English Government*. Blackstone has given the constitution in detail ; the text, with a commentary : our Chairman has only sketched some of its prominent features, with the purpose to draw an outline rather than a whole ; leaving to the eye to supply latent parts, and to the judgment to fill up obvious deficiency. He, who predicates of the Russian government, must leave much for the reader to learn from the Russian code, concerning

cerning the prerogatives of the Empress : he who talks of the powers of the President of the American States, must refer incidentally to *the paper*, which contains their constitution, for minute particulars. Addressing his *Thoughts* to the *English people*, our Chairman left much for them to supply, from the stores of their knowledge, and much to be inferred by their own *good sense*. Such being his *intention*, I know not, if we can consider his *brevity* as a *crime*.

§ 31. Whatever may be his brevity, or his crime, he seems determined, with Sir Humphry Mackworth, to instruct the English people, that they have the happiness to enjoy, as Sir Humphry told King William, “ two very extraordinary particulars ; the excellency of their “ king ; and the excellency of their govern- “ ment : ” nor is our Chairman behind the *Vindicator* of the *Rights of the Commons of England*, in avowing his “ love of kingly govern- “ ment.”\* Such were the stile and sentiment of

\* See the *Vindication of the Rights of the Commons*, by Sir Humphry Mackworth, a well-known writer on politics, trade, and other useful topics, who published, in 1701, that valuable tract, with a Dedication to King William, with another to the Lords, and a third Dedication to the Commons.

1701 ! Whether this language, or this law, be criminal, at present, except at *Copenhagen-House*, will not admit of much argument among our constitutional critics. We shall, probably, hear our Chairman cry out :

“ My foes could not procure me any *scathe*,  
“ So long as I am loyal, true, and crimeless.”

§ 32. By his *loyalty*, is our Chairman induced to inculcate, in page 9, that “ the best king, and the best government, are HEREDITARY :” yet he is not prevented, by his *loyalty*, from saying contemptuously, in p. 47, “ I thought, that *the divine indefeasible right of kings*, with other fancies of former times, were exploded principally ; because they were positions that had no warrant from the known express laws of the land.” In the opinion of Lord Mansfield, we have an indubitable right “ to judge from the *whole work* ;” in all cases, from “ the *whole context*.”\* If, then, we couple the text and the context together, we discern the genuine opinion of our Chairman to be, that the *kingship* is *hereditary*, but *defeasible*. If captiousness threaten him with *scathe* for this doctrine, he must quote Blackstone for

\* See Mr. Erskine’s argument of the Dean of St. Asaph’s case, Stockdale’s Trial, p. 186.

his authority,\* and summon Charles Yorke for his advocate. "I believe," saith Blackstone,† "there is no instance, wherein the Crown of England was ever asserted to be elective, except by the regicides at the infamous and unparalleled trial of King Charles I." The hereditaryness of the government is finely illustrated by Charles Yorke, when he assures us, "that should the heir to the Crown happen to be an alien, nevertheless *the descent* has its free course; lest there be an *interregnum*, which the law will not suffer."‡ *Those forms are best*, saith TEMPLE, *which have been longest received, and authorised in a nation by custom and use.*

§ 33. By a consideration of those forms, and of this custom, our Chairman was probably induced to invest "the best King" with legislative power. But, he explains his meaning and his purpose, in four *consecutive* paragraphs: || in the first, he says, that "*the king makes laws*;" ¶ in the second he annexes a *qualification*

\* 1 Comm. chap. 3. † Ib. p. 191. 4to edit.

‡ Confid. on the Law of Forf. 112.

|| See Thoughts, &c. p. 10. 11.

¶ We need only look into the enacting part of any act of parliament, ancient or modern, to see the *best form*, which



ration to the King's power, in the making of laws ; in the third paragraph he adds, " *accordingly*, the King can *enact no laws*, without " the advice and consent of the Lords and Commons in Parliament assembled ;" and in the fourth, he subjoins his general inference, from his previous premises ; " in this manner is the " power of the King qualified in the making " of laws." Must we again quote Lord Mansfield as our authority, for bringing the *text*, and the *context*, to explain the genuine sense of the author ? And must we apply to dictionaries, for the meaning of the English words *qualification* and *qualify* ; qualification having, as the context requires, the restrictive signification of

which TEMPLE approves, as being *longest received*, and authorised by *custom* and *use*. Let us take the act, which was passed on the 27th of June, 1795, for settling a jointure on her Royal Highness the Princess of Wales :— " We, the Commons of Great Britain, in Parliament " assembled, do most humbly, cheerfully, and unanimously " beseech your Majesty, that it may be enacted, and be it " *enacted* by the KING's Most EXCELLENT MAJESTY, by " and with the *advice* and *consent* of the Lords Spiritual " and Temporal, and Commons, in this present Parliament assembled." Such, then, is the *established custom* and *use* of *Parliament*, which is an essential part of the law of the land. Is there any surer way of knowing the legislature of this kingdom, than by reading the preambles to our laws ? saith the learned William Clarke, in the *Connection of Roman, Saxon, &c. Coins*, p. 465.

*abatement, diminution, and modification; and to qualify* being a fynonimous verb with *to modify, to regulate*: let, then, the *constitutional* lawyers find treason, felony, or breach of the peace, in those *four consecutive paragraphs*, if they can. If, with malicious diligence, they look into a *fifth consecutive paragraph*, they will see, even with jaundiced eyes, that our Chairman has given the two Houses of Parliament as *adjuncts* of the King's legislative power. They find the word thus applied, but know not its meaning, and its use, as it is found in English literature. Now, in the whole compass of the English language, copious as it is, a more expressive term cannot be discovered than *adjunct* to convey his true meaning, if the logical signification of the word be, "something adherent  
 "or united to another, though not essentially  
 "part of it." Our Chairman, then, has only said, what every act of parliament seems to say, of the King's power, and practice, in the making of laws. And, when our constitutional lawyers shall have learned the *termes del ley*,\*, they will

\* That black letter book may be bought at Brookes's, in Bell-yard: nay, there may be had, at the same shop, printed in Roman letter, a *translation*, for the benefit of the learned serjeants and Welch judges, who may, possibly, not understand the antiquated language of our English law.

find,

find, that there is little criminality in this legislative language, either in point of logic, or of law.

§ 34. Such, then, being the legitimate notions of our Chairman, as to the King's *legislative power*, let us hear what he inculcates, concerning the King's *executive authority*. "It is an *hereditary king*, who bears all the burthen of government, who is endued with all the power necessary to carry it on, who enjoys all the pre-eminence necessary to give splendour to so high a station. It is the King's *peace* under which we enjoy the freedom of our persons, and the security of our property : he executes the laws which contain the rules, whereby that peace is kept ; and for this purpose, all officers, civil and military, derive their authority from him."\* In order to strengthen this *all-powerful sway*, our Chairman invests the kingly power with perpetual continuance, since the *king never dies*, and with eminent goodness, since the *king can do no wrong*.† After thus carrying up "this

\* See Thoughts, &c. p. 9, 10.

† The inquisitive reader may see all those executive powers of the king much enlarged, and all those *technical* expressions greatly heightened, in Blackstone's 1st Com. ch. 7.

“royal sovereignty,” as far as mortal institutions can go towards the government of heaven, he makes reasonable deductions in *three consecutive paragraphs*.<sup>\*</sup> To that supremacy he adds *qualifications*, whereby “the king’s subjects” are admitted to participate in a share of those “high trusts.” “In the administration of justice, the king’s power is qualified,” says our Chairman, “by joining the judges and grand and petty juries.” Not satisfied with adding *qualifications*, he superadds “*controuls* on the power of the king.”<sup>†</sup> And for this important end of *checking* the *abuse* of that power, our Chairman asserts it as a principle, which is annexed to the whole exercise of government, “that if wrong be done by the application of “the king’s power,” the instrumental persons are answerable to the law.<sup>‡</sup> Well may our Chairman exclaim, in explanation of his own language, and in confirmation of his own meaning:—

“Let partial spirits still aloud complain,  
 “Think themselves injur’d, that they cannot reign!  
 “And own no liberty, but where they may,  
 “*Without* CONTROUL, upon their fellows prey.”

\* See pages 10, 11, 12.

† See page 11.

‡ See page 11, 12.



§ 35. Such, then, are our Chairman's sentiments as to the *executive power*, when his scattered opinions are brought from the context into consecutive connection. He does not assume the adulatory language of Parliament in former times.\* He does not adopt the fulsome expressions of Sir Henry Finch.† He does not run out with Bracton upon the barren heaths of prerogative; but with the modesty, though not the elaboration of Hale, he states the executive power of the king with apt *qualifications*, and just *controuls*; placing the law as superior to all, in superintending magistracy, and correcting ministers.

§ 36. Yet, his brevity did not permit him, like Blackstone, to go into the wide detail of the *executive power*, with systematic explanations.‡ Indeed, Charles Yorke is superior to both, in softening down some of the harsher features of the *prerogative*, in bringing from the back ground some of the darker shades, and in touching the whole canvas with a more de-

\* 24 Hen. VIII. ch. 12. D'Ewes, p. 619—33—77.

† Finch's Law, 81—2, 3. The king, he says, carries *God's stamp*, and has the *shadow of God's excellencies*—with other foolish and fanatical expressions, which are still laid before our *templars* by the *benchers*.

‡ See 1 Blackst. ch. 7.

licate pencil. Such is the felicity of his colourings, that even a republican *connoisseur* may coolly survey the figure, without disgust, and may steadily look on royalty, without disquiet. Yet, may the failings of our Chairman, which are very different from crimes, be forgiven, when we hear from Charles Yorke,\* “ That “ in the king, both the common and statute “ law have reposed the whole executive power ; “ and hence it is,” continues he, “ that the “ safety of the king’s person is protected with a “ superlative care.”—*They are the best laws, saith BACON, by which the king hath the justest prerogative, and the people the best liberty.*

§ 37. With such authorities before him, well might our Chairman state, without offence, “ that the government, and the administration “ of it in all its parts may be said to rest wholly “ and solely on the king, and those appointed “ by him : those two *adjuncts* of parliament “ and juries, are *subsidiary*, and occasional; but “ the king’s power is a substantive one always “ visible, and active.” With such *adjuncts* the government cannot be deemed arbitrary : and with such *subsidiaries* the administration cannot be thought independent in its powers,

\* Confid. on the Law of Forf. 110.

or dangerous in its practice. To state the law; as the law is, can never be illegal: and, to write public truths, concerning the *justest prerogative*, cannot easily be deemed criminal by a people, who enjoy the *best liberty*; if the right of public discussion be a constitutional good, which produces public opinion for its lawful issue. “As the worst evils of society flow “from short-sighted or perverted judgments,” saith Charles Yorke,\* “the CONSTITUTION, “with a policy peculiar to itself, encourages “every method of popular instruction.”

§ 38. With this *warrant* in his hand, our Chairman, no doubt, thought it *warrantable* to avow his *archæological* opinion to be, “that “the government of England is a *monarchy*:† “the monarch is the ancient stock, from which “have sprung those goodly branches of the le- “gislation,

\* Considerat. on the Law of Forf. pag. 3.

† The inquisitive reader may see the *archæological* opinion of our forefathers, who living nearer the time, knew better than we, in the preamble of the Act of Parliament, 24 Hen. VIII. ch. 12.—“Where [as] by divers fundry old authentic histories and chronicles, it is “manifestly declared and expressed, that this realm of “England is an *empire*, and so hath been accepted in the “world, governed by one *supreme head* and KING; having “the dignity, and royal estate of the *imperial crown* of the “same;

“gillature, the Lords and Commons, that, at  
 “the same time, give ornament to the tree,  
 “and afford shelter to those who seek protec-  
 “tion under it.” It must be either *short-*  
*sighted*, or *perverted judgments*, which can ob-  
 ject to such an archæological position, with such  
 an Act of Parliament before their eyes, if *our con-*  
*stitutional lawyers* ever read acts of Parliament.  
 The jurisprudential prudery of Blackstone, in-  
 deed, imposes shackles on his own disquisitive pen.  
 The original of parliaments is one of those mat-  
 ters, he says,\* that lie so hidden in the dark  
 ages of antiquity, that the tracing of it out is a  
 thing equally difficult and uncertain. It has  
 been a matter of great dispute among our learn-  
 ed antiquaries, he adds: and he avows his in-  
 tention not to enter into controversies of this

“same; unto whom, a body politic, compact of all sorts  
 “and degrees of people, divided in terms, and by names  
 “of spirituality, and temporality, been bounden, and owing  
 “to bear, next to God, a natural and humble obedience;  
 “he being also *institute*, and *furnished*, by the *goodness*  
 “and *sufferance* of ALMIGHTY GOD with plenary, whole,  
 “and entire power, pre-eminence, authority, preroga-  
 “tive, and jurisdiction, to render and yield justice, and  
 “final determination to all manner of folk, residents,  
 “or subjects, within this his realm, in all causes, &c.  
 “&c.”

\* 1 Blackst. 147—4to. edit.



fort.\* We must, then, look for light from some other beacon :—indeed,

———“ Modest doubt is called

“ The *beacon* of the wife.”

§ 39. Blackstone upon another occasion did not scruple, as we have seen, to assert, that English freedom was totally abolished at the Conquest.† On the other hand, William Clarke, who has treated this subject with more research, more learning, and more ability, than Blackstone, says explicitly, “ The Norman Conqueror first gave the Commons of England a just notion of their own importance, and laid the foundation of those rights and privileges they now enjoy.”‡ That fine writer adds a manly sentiment, which is very different from the slavish spirit of Blackstone : “ A zeal for our ancestors freedom, as well as our own, sometimes carries us into such conclusions, as are beyond the limits of truth. But if the right of assisting in the legislative councils of this kingdom was not the original inheritance of the English Commons,

\* 1 Black. 149. † 4 Comment. 431—4to. edit.

‡ See the connection of the Roman, Saxon, and English coins, printed for Bowyer, 1767, from p. 448 to 472, a most learned and curious discussion of this constitutional question.

“ was it ever the less beneficial, or less honour-  
 “ able for being acquired.”\* Whitaker, the  
 illustrious historian of Manchester, has written  
 on this “ point of curious speculation, which  
 “ yet is uninteresting to the cause of liberty and  
 “ the principles of monarchy,” with more elab-  
 oration, more intellect, and more erudition,  
 than Blackstone, or Clarke. Whitaker assures  
 us,† that the question is easily determinable by  
 an appeal to reason and records. Under the  
 feudal system of England the whole kingdom,  
 and a single barony, were exactly the mirrors of  
 each other. “ The real members of the Parlia-  
 “ ment,” he adds, “ appear from the essential  
 “ qualities of the feudal system to have been  
 “ merely the royal thanes, or the immediate  
 “ feudaries of the crown. They, and they  
 “ only, could have been obliged by their tenure  
 “ to attend upon the royal court : and they  
 “ only, therefore, could have been the genuine  
 “ constituents of the Parliament. The sub-feu-  
 “ daries of the kingdom could no more have  
 “ been obliged to do the one, or allowed to be

\* Ib. 473.

† The whole of the History of Manchester, book ii.  
 ch. 6. which treats with wonderful research and extraor-  
 dinary learning, of “ the genius and constitution of the  
 “ Saxon royalty,” is well worthy of the attentive peru-  
 sal of every curious person.

“ the other, than they could have been required  
 “ to perform their feudal services, or permitted  
 “ to discharge their feudal payments directly to  
 “ the crown. The attendance in the court-ba-  
 “ ron was merely the incident of a baronial  
 “ feud: and the attendance in the court-royal  
 “ would be merely the appendage of a royal  
 “ one.” The truly masculine and independent  
 Whitaker subjoins, in another place, an analo-  
 gous passage, which may be regarded as one  
 of the fairest flowers, that can be gathered from  
 the unweeded garden of our annals. “ I have  
 “ shewn, in the body of this work, that the  
 “ monarchies of Britain were founded on a re-  
 “ gular system of liberty, and so far I have as-  
 “ serted the interests of freedom and of man.  
 “ But the spirit of the times, if not properly  
 “ checked, would carry us into absurdities that  
 “ would disgrace the cause. We should see the  
 “ Tartuffes of liberty, like those of religion  
 “ formerly, throwing a discredit over it by their  
 “ follies; and ancient history would be gradu-  
 “ ally dressed up in the *cropt hair*, the cloak,  
 “ and the band, of political puritanism.”\*

§ 40. It were happy for our Chairman, if this complaint were applicable only to other

\* Supplement to the Hist. of Manchester, 1773—p. 160.

countries, and to other times. By the confiderations of Clarke ; by the vigour of Whitaker ; was he probably induced to hazard his archaeological sentiment, “ the *monarch* is the ancient “ stock, from which have sprung those goodly “ branches of the legislature, the Lords and “ Commons.” With the warrant of Charles Yorke in his hand, with the act of parliament of the forgiving Henry in his pocket, I fear the *TARTUFFES of liberty* will bring him to the—*fatal tree*.

§ 41. Nay, Sir, with his own wicked imagination he *figured* a tree ; with scandalous tongue he did assert, that the branches derive their origin and nutriment from their common stock ; and with libellous pen he did publish, that the branches may be lopped off, yet the tree is a tree still, though shorn of its honours, but not, like them, cast into the fire ; the said *figure* being *imagined* of, and concerning, the Lords and Commons, in parliament assembled.

§ 42. This is the mischievous *metaphor*, which is not only mischievous in itself, but the cause of mischief in others :—it occasioned *Tartuffes* to tattle ; it induced wrongheads to rant ; it brought *followers* to shew their faces ; and it made friends to fall off. How to defend this  
meta-



metaphor, I am yet, alas ! to learn. Mr. Erskine shall defend it : “ Gentlemen of the Jury : \* —  
 “ The Chairman of the Association for defending the Constitution against Republicans, who  
 “ is brought as a criminal before you, for the  
 “ publication of this book, has, by employing  
 “ me as his advocate, reposed what must appear to many an extraordinary degree of confidence ; since, although he well knows, that  
 “ I am personally connected with most of those  
 “ whose conduct and opinions are principally  
 “ arraigned by its author, he, nevertheless, commits to my hands his defence and justification. Gentlemen ; I am ready to admit, that  
 “ this *metaphor* might have been expressed in  
 “ language more reserved and guarded ; *but,*  
 “ *you will look to the sentiment itself, rather*  
 “ *than to its dress ; to the mind of the writer,*  
 “ *and not to the bluntness, with which he may*  
 “ *happen to express himself.* It is obviously the  
 “ language of a warm man, engaged in the  
 “ honest defence of *the constitution*, and who is  
 “ brought to what he thinks a just conclusion  
 “ in argument, which, perhaps, becomes offensive in proportion to its truth. Truth is,  
 “ undoubtedly, no warrant for writing what is  
 “ reproachful of any *private* man ; but, as to

\* See the opening of Mr. Stockdale's defence by Mr. Erskine, word for word. *Trial*, p. 31.

“ writings on *general subjects*, which are not  
 “ charged as an infringement on the rights of  
 “ individuals, but as of a *sedition tendency*, it  
 “ is far otherwise.---When, in the progress of  
 “ legislation, or of high national justice in Par-  
 “ liament, they who are amenable to no law,  
 “ are supposed to have adopted through mistake,  
 “ or error, a principle which, if drawn into  
 “ precedent, might be dangerous to the public ;  
 “ I shall not admit it to be a libel, *in the course*  
 “ *of a legal and bona fide publication*, to state  
 “ that such a principle had *in fact* been adopt-  
 “ ed : for, the people of England are not to be  
 “ kept in the dark, touching the proceedings of  
 “ their own representatives. Let us, therefore,  
 “ coolly examine this supposed offence, and see  
 “ what it amounts to.”\*

§ 43. But, first let us recapitulate *the RULE* :  
*we must look to the sentiment itself, rather than to*  
*its dress ; to the mind of the writer, and not to*  
*the bluntness, with which he may happen to ex-*  
*press it.*

“ True *law* is nature to advantage drest,

“ What oft’ was thought, but ne’er so well exprest.”

\* See Mr. Erskine’s defence of Mr. Stockdale, what he pleads so applicably ; in p. 76-7 of the published trial.

ACTUS

**ACTUS NON FACIT REUM NISI MENS SIT REA.** Now, without troubling the gentle reader with the antiquated question, about the original of Parliaments, what is the sentiment of this warm defender of the constitution? That the King, being the *caput, principium, et finis* of the Parliament, as Blackstone\* re-echoes from Hale, Coke, and older law authorities, has the sole power to call the Parliament by his writs; to meet them, when they do meet, without whose presence there can be no beginning of a Parliament; to prorogue the Parliament by his voice, and to dissolve the Parliament by his proclamation. That the King exists *before* the existence of Parliament, by means of his writs; that the King acts, without the Parliament, even during the sitting of Parliament; and that the King equally exists, and equally acts, when the Parliament ceases to exist, either from the natural infirmities of old age, or from the premature scratch of the King's pen. And, when these sentiments are thus clearly expressed, of,

\* Blackstone, p. 153, 4to edit:—the whole of book i. chap. 2. "Of the Parliament," treats elaborately of this interesting subject; and warrants the doctrines here laid down, in the very words. BACON wrote to VILLIERS: "By the King's authority *alone*, and by his writs, Parliaments are assembled: and by him *alone*, they are prorogued and dissolved; but each house may adjourn itself."

and concerning the King, and the Parliament, what are such sentiments but the law of the land, whatever offence they may give to those persons, who hissed the King's name and office at Copenhagen-House; and who, three days thereafter, insulted the King's person in Parliament Street. No *constitutional* lawyer can deny those positions to be the law of the land; no *constitutional* lawyer, then, ought to deem the publication of law to be criminal, whatever may be his prejudices: for, Mr. Erskine can tell, with eloquent tongue, that it is not a libel to publish *public truths*; that the people of England are not to be kept in the dark, touching parliamentary matters.

§ 44. Yet, shall we hear our *criminal* lawyers insist, that the said *metaphor* was figured, and published, of, and concerning, the Lords and Commons, in Parliament assembled, with the wicked design of bringing them into contempt with the people. This crimination supposes, what I imagine cannot be supported, that it is unlawful to *typify* the Parliament. This suggestion of legality, or illegality, leads to the inquiry, whether it has been usual (and use constitutes law) among our historians, and law writers, to typify the Parliament. This inquiry will end in discovering, that the Parliament

has,



has, in fact, been often typified by them, from the various topics of *physics* and *metaphysics*. The King has been typified by a crown; the Lords by woofacks, and the Commons by a house: when formed into a *congeries*, the King, Lords, and Commons, have been typified by the body and soul of man. Had the culprit, indeed, likened the Parliament to a body corporate, there had not been so much objection; but, he has likened the Parliament to a tree, in order to degrade the Parliament in the eye of the people; a tree being an object, which is less grateful to the sight, than a body, less durable in its existence, and less useful in its purposes.

§ 45. Nay; is not JESUS CHRIST called *the TREE OF LIFE*?\* Doth not the *Psalmist* liken the *godly* to a tree, planted by the rivers of water, that bringeth forth his fruit, in his season?† In the *parable of the vine*, Christ says, ‡  
 “ I am the true vine, and my father is the husbandman: I am the vine; ye (the people)  
 “ are the branches: If a man abide not in me,  
 “ he is cast forth as a branch, and is withered;  
 “ and men gather them, and cast them into the  
 “ fire, and they are burned.” Our Saviour

\* Rev. ii. 7—xxii. 2.

† Psalm i. 3.

‡ John xv. 1.

endeth his sermon on the mount, by typifying the ungodly as *trees*, which bring not forth good fruit, and are hewn down, and cast into the fire.\* We have here “proofs of holy writ,” that *the tree* is a scriptural *type*, by which *Omnipotence* is often figured, and *goodness* is aptly metaphorized.

§ 46. Our chairman, then, has at least *scripture* on his side. As *Omnipotence* is typified by a *tree*; so he figures the Parliament, which is said to be omnipotent, by a tree; as mankind are likened to the branches; so he metaphorizes the Lords, and Commons, as branches. But, what sort of branches? The tree is known by its fruit. He calls them expressly “goodly branches,” *ornamental* branches, *sheltering*, and *protecting* branches to the needful: and yielding thus *protection* to those, who seek for *shelter* under them; he, therefore, adds, that they are *honours* to the tree.† Our constitutional lawyers, being as great masters of *language*, as of *law*, will, no doubt, consider the epithets *goodly* and *ornamental*, *protecting* and *honourable*, as *aspersions* on the Parliament, which tend to bring them into *contempt* with the people; who

\* Mat. vii. 19.

† Thoughts on Government, p. 12, 13.

are yet shown, by the figure, where they may find shelter from the storms of faction, and the ills of anarchy. Now, the branches, producing, in this manner, *good fruit*, are *not* to be *cast* into *the fire*. The branches only, which produce not good fruit, are to be hewn down and cast into the fire; as we see in *the scriptures*, which were still in our chairman's head, and heart. *Religion, in its own nature*, saith ADDISON, *produces good will towards men, and puts the mildest CONSTRUCTION upon every accident, that befalls them.*

§ 47. I grant, however, that our chairman cannot quote scripture for his offensive phrase of *lopping off*, though it be no news to tell us, that the branches may be *lopped off*, yet that *the tree is a tree still*; as the hedge-rows in the county of Kent can testify. No:—It was not from the Bible, but the law books that,

— He became a *borrower* of the night  
For a dark hour or twain.

§ 48. He had, no doubt, heard Blackstone gravely say,\* with prudish tongue, “ that “ some invidious *branches* of the *prerogative* “ have since been LOPPED OFF,” though the

\* Blackstone, p. 432, 4to edit.

prerogative be as much a branch of the constitutional tree, as any other part, parcel, or particle, of the common, or statute, law, as Charles Yorke asserts. If precedent make law, or justify error, we have here, in Blackstone, either a justification, or a fault; though analogy, indeed, might warrant the woodmen of Arden. Nay;—

He, that but conceives a crime in thought,

Contracts the danger of an actual fault:

Then, what must he expect, that still proceeds

To commit sin, and work up thoughts to deeds?

§ 49. Our chairman, I fear, has not only *conceived a crime*, in *filching* thus his *phrase*; but has plainly incurred *the danger of an actual fault*, by borrowing more from Blackstone, than he is ready to repay. He doth not indeed, *commit a sin*, as to his *figure*, which he found in *scripture*: but, his *thoughts* of the King, of the Lords, of the Commons, however naughty, he *worked up to deeds*, from the said jurist, than whom

— No commentator can more slyly pass

O'er a learn'd, unintelligible, place.

§ 50. Our Commentator slyly typifies the King, Lords, and Commons, as the *body politic*; of which the King is *said* to be the *caput, principium, et finis*. If the King be the *head*,  
in



in our commentary, where shall we find the *hands*, which are to execute what the *head* contrives? For this important information, we must have recourse to honest Sir Humphrey, before mentioned, who assigns those honourable, and useful, members, to the Lords, and Commons. But, if the Parliament be subject to *disease*,\* and to *death*, as Blackstone assures us,† from Hale, and Coke, may not the hands be subject to disorder; as we have been pertinaciously told by the Priestleys, and Cartwrights, of the times. If, in this extremity, which all good men would deplore, we should call in orator Jones, the political apothecary, he might pronounce the bone to be carious, the flesh putrescent; and, with the rashness of such operators might advise (what I die to repeat) *amputation*, as necessary. Nay, our state physician, the celebrated commentator, pronounces that the Parliament is subject, not only to disease, but to death; and that the *death of the Parliament* may be effected, by *the King's will*.‡

— Death, a necessary end,  
Will come, when it will come!

\* 1 Comment, 179;—4 Institute, 23;—Hale of Parl. 112;—Com. Journ. 10-11, May, 1571.

† 1 Comment 187, 4to edit. ‡ Id.

I will quit a subject, which forces seriousness upon all, by reflecting, how little is to be gained, in adopting our commentator's *figure* of a body politic, rather than our chairman's *metaphor* of a *tree*, either in usefulness, or dignity, if we follow up *the figure*, like good writers, or accurate logicians.

§ 51. Yet, may I be permitted to ask, have parliaments never produced *bad fruit*? “The law will make no answer, according to Charles Yorke, but history will give one.”\* *The fact may be stated*, says Mr. Erskine. The Oxford parliament was *lopped off* in 1681, and cast into the fire. The parliament of 1783 was *lopped off*, and cast into the fire. There never was such a bonfire, as blazed out in 1784; some of the twigs were consumed, some of them were scorched, and all of them were roasted: there was a kind of martyrdom, and a good-humoured annalist wrote an account of the event, titling it, in the spirit and style of that excellent *Joe-Millerist*, Mr. Courtney, “the History of Fox’s Martyrs.”

§ 52. To those transactions, our Chairman probably alluded, when he said,\* “the kingly

\* Confid. on the Law of Forf. 110.

† Thoughts on Government, p. 13.

“ govern-

“ government may go on, in all its functions,  
 “ without Lords or Commons : it has hereto-  
 “ fore done so, for years together ; and, in our  
 “ times it does so, during every recess of Parlia-  
 “ ment.” I will admit, with Mr. Erskine, “ that  
 “ this sentiment might have been expressed in  
 “ language more guarded ; but we must look to  
 “ *the sentiment*, rather than to its dress ; to *the*  
 “ *mind* of the writer, rather than to the blunt-  
 “ ness, with which he expresses it.” The *mind*  
 is good, the *sentiment* is good ; but the language  
 is unguarded ; because it doth not convey dis-  
 tinctly the *sentiment* of the *mind*. He had  
 said precisely, two pages only before, “ that  
 “ the King can enact no laws, without the ad-  
 “ vice and consent of the Lords and Commons ;”  
 and he had incidentally said, that the King can-  
 not impose taxes, which is a *legislative act*,  
 without such advice, and consent. By the *kingly*  
*government*, then, he plainly means the *executive*  
 government ; which is entirely invested in the  
 King, by the common, and statute, law, says  
 Charles Yorke. But, to the *executive functions*  
 of the King, our Chairman has annexed, through  
 the two preceding pages, *qualifications*, *con-*  
*trouls*, *adjuncts*, *subsidiaries*, and *responsibilities*.  
 With such *checks*, which the law imposes, the  
*kingly government* may go on, as the law war-  
 rants, in all its functions, without the Lords, or  
 Com-



Commons, during their existence, or their non-existence. In this satisfactory manner, does *the context* lay open *the mind*: and, the *mind* being thus laid open, *the sentiment* becomes as clear as light, and as unobjectionable as law.

§ 53. But when captiousness may ask what ignorance may dictate, there is no end to cavils. *Wiser men*, saith Hooker, *consider how subject the best things have been unto cavils; when wits; possessed with disdain, have set them up as their marks to shoot at.* Nay; does not the Chairman \* assert, “ that the kingly government “ may go on, without the Lords, and Commons, *for years together?*” Yes; and is not the law so; though it be unknown to the *constitutional* lawyers? Had they searched the statute-book, they had not been now to learn the acts of parliament, which demonstrate,† that our Chairman was right in his *principle*, whatever he may be in his *policy*. The existing law only requires, that the Parliament sit *within three years.*‡ The gentle reader will have the goodness to bear in mind, that I am now arguing the point upon the strict letter of the

\* Thoughts on Government, p. 13.

† 16 Ch. II. ch. 1. 1 W. & M. stat. 2. ch. 2. 6 W. & M. ch. 2.

‡ 1 Blackst. p. 153.



law, on a charge of crime, which is repelled by the acts of parliament. I grant, that *necessity*, which is even more omnipotent than parliament, requires an annual session. Indeed, had he been a member of the Privy Council, instead of the Chairman of an association, he might have been faulted for his folly, in fighting with necessity. But, I know not, whether a pamphleteer, in whom there is neither trust, nor privity, can be punished, like a privy-counsellor, for prating without purpose, though not without book.

§ 54. Our Chairman is, however, determined to defy cavil, when he cries out at last; “but, “without the King, *his* Parliament is no more!” To this ejaculation, I see not what can be objected, except that it is neither *original*, nor *new*. This position is, indeed, as old as the common law, as true as the declaration of rights, and as incontrovertible as the great charter: for, “the King, being considered in “law,” saith Blackstone, “as the head of the “Parliament, that failing, the whole was held “to be extinct.”\* Our Chairman had DRYDEN in his eye——

——“The Commons live, by no divisions rent:

“But, the *great monarch’s* death dissolves the government.”

If

\* 1 Blackstone, p. 188. Our Chairman again leaves something to be supplied by the intelligent reader. He had

If the head be, indeed, the organ of sensation, and the seat of thought, the body can no longer

had done well to have stated that, though his position were true in the general, at common law, the statutes 7 & 8 of Wil. III. ch. 15, and 6 Anne, ch. 7, now prevent the dissolution of parliament by the demise of the crown: yet, may our Chairman be forgiven for his *unprecision*, when it is considered, that Blackstone wrote *contradictorily*, and *inaccurately*, upon this delicate and curious point of our *public* law. "A parliament may be dissolved," saith Blackstone, "by the *demise* of the *crown*." "This *dissolution* formerly happened immediately upon "the *death* of the *reigning sovereign*." [1 Blackst. p. 188.] Now, there may be a *demise* of the *crown*, without the *death* of the sovereign: there was such a *demise*, *demissio regis, vel coronæ*, when Edward the *Fourth* was driven from his throne for a few months by the *Lancastrians*; and this temporary *transfer* of the *royal estate* was denominated his *demise*; whereby all process was discontinued, as if Edward had fallen in battle. Old Plowden has well observed, that the demise of the crown meant in law, that in consequence of the disunion of the king's body natural from his body politic, the kingdom is *transferred* to his successor. [1 Blackst. p. 249.] It was, then, the *transfer* of the crown, which caused the dissolution of the parliament, at common law. From this deduction, I flatter myself, I am warranted in saying, that Blackstone is contradictory and inaccurate; and instead of saying that, "immediately upon the death of the reigning sovereign, "the dissolution formerly happened," he ought to have said, "immediately upon the *accession* of a *new sovereign*:" because it was this event, which completed the *transfer*.

Yet;

longer exist, when the head ceases to think. Charles Yorke has again carried away the palm from our Chairman, and our Commentator, in bringing forward a latent principle of our public law, which is of great importance to the nation. "When the throne became vacant, by the abdication of James II. the King, *as an estate*, still subsisted, in notion, and judgment, of law. Mr. Locke, in considering the subject, indeed, as a theorist, speaks of such cases as absolutely dissolving the *constitution of government*. But, the lawyers of those times did not carry it so far; and the reason, why they did not, was a master-stroke of policy and wisdom."\* From this deduction, then, is it appa-

Yet; the twelfth edition of the Commentaries, with the last corrections of the author, and the additions of Richard Burn, LL. D. John Williams, Esq. and of Edward Christian Esq. left this inaccuracy as they found it.

\* Considerat. on the Law of Forf. 110. It is not sufficiently known, that neither Mr. Locke, nor his Treatise on Government, were in England at the Revolution: so that neither SOMERS, nor the other confederate lawyers, who acted with such masterly wisdom, knew any thing of him, or his book. He came over from Holland with the women, and the baggage, after the business was done, and not in the front of the battle with Burnet. Yet, our constitutional lawyers prate and act, as if our whole "constitution of government" had been copied literally from Mr.

apparent, that our Chairman is more in unison with SOMERS, than with LOCKE; since his whole *Thoughts on Government* are intended to satisfy the people, that *experience* is preferable to *theory*; judging with BACON, *how much better it were, that men in INNOVATIONS would follow the example of TIME itself, which indeed innovateth greatly, and by degrees.*

§ 55. Our Chairman was, by this consecution, led forward to speak of that EVENT, “which was brought about,” he says, “by some of the *best* and *greatest* men in the nation.” The proceedings, on that occasion, he is studious to tell, “are the objects of serious study and contemplation; precedents, that are regarded with reverence, and with gratitude towards those who made them.” Such is our Chairman’s eulogy\* on *the Revolution*, with all his enmity to revolutions.

§ 56. Aye; but doth he not talk contradictorily of, and concerning, the Revolution, “as the shreds and patches of old date?” Our constitutional lawyers are continually forgetting the principles of true criticism, and are ever

Mr. Locke’s subsequent Treatise; of which HUME speaks so contemptuously. 8 Hist. p. 323.

\* *Thoughts on Government*, 40—43.

wink.



winking away the maxims of the law of libel. "In this manner," says Mr. Erskine,\* "the  
 "greatest works upon government, the most  
 "excellent books upon science, the sacred  
 "scriptures themselves, might be distorted into  
 "libels, by forsaking the general context, and  
 "hanging a meaning upon selected parts." Nay; the DECALOGUE might easily be thus  
 perverted into a libel, by sinking the voice in  
 recitation, or suppressing a word in writing:—  
 SHERIDAN need only say to MILES: THOU  
 SHALT [*not*] BEAR FALSE WITNESS AGAINST  
 THY NEIGHBOUR: THOU SHALT [*not*] COM-  
 MIT ADULTERY. Any documents, however  
 sacred, or however grave, may, indeed, be *dis-*  
*torted* into a libel, by *forsaking* the *general con-*  
*text*, by *hanging* a meaning upon selected parts,  
 and by suppressing the positive qualifications of  
 general positions. By this management, ridi-  
 cule of folly may be converted into reprehension  
 of wisdom. Let us take an example from  
 our Chairman's *Thoughts*: "What disappoint-  
 "ment and discomfiture it must be to those  
 "idolizers of the *constitution supposed to be esta-*  
 "blished at the *Revolution*, to discover, at  
 "length, that they have bestowed their applause  
 "and affection upon the shreds and patches of

\* Stockdale's Trial, 40.

"old date!" If the qualifying word *supposed* were only suppressed, the sense of the whole paragraph would be thereby perverted: and sarcasm on the idolizers of a phantasm would be converted by trick into satire on the worshippers of truth. To such a critic, to such a lawyer——

—— We grant our amplest pow'rs to fit  
Judge of all present, past, and future wit;  
To cavi, censure, dictate, right or wrong,  
Full and eternal privilege of tongue.

§ 57. If true critics, however, free our Chairman from crime, in ridiculing *idolatry*, political, as well as religious, I doubt whether true lawyers will acquit him of a worse charge, which their willing eyes may find in the same paragraph.\* Here is the overt act: "Had the "*idolizers* of the constitution, *supposed* to be "established, at the Revolution, lived in the "wicked reigns of Charles II. and James II. "they would have enjoyed *in theory*, though "not in practice, as good a constitution as they "have had since, with the single exception of a "protestant king." The offence, wherewith this paragraph is supposed to be pregnant, doth not so much consist in uttering a new sentiment, as in adopting, without the consent of the owner,

\* Thoughts, page 53.

an old remark of a preceding commentator. Blackstone had certainly said, "That the constitution of England had arrived to its full vigour, and the true balance between liberty and prerogative was happily established by law, in the reign of King Charles II."\* And our Commentator had assigned the year 1679, as the true epoch of this *theoretical perfection*.† But I pretend not to know, whether those critics, who

"Give law to words, or war with words alone," have yet settled upon undisputed principles, that *coincidence* amounts to *plagiarism*; whether those lawyers, who are "vassals to a name," have yet affirmed, that *plagiarism* is a *libel*; or whether our "dupes to party" have finally established it as a maxim, that the printing of *public* truth is as criminal in its tendency, as the propagation of *party* falsehood.

§ 58. The fact is,—

"Might I speak plain, and, in a nation free,

"Assume an honest layman's liberty,"

that the *Revolution* was made in pursuance of an old, rather than creation of a new, example; was accomplished in declaration of the old, rather than in adoption of a new, law; as our Chairman has, indeed, stated from the statute

\* 4 Comment. 432.

† Ibid.



book. The Rolls of Parliament, the history of the island, had shown examples, which were more striking, because they were more bloody ; yet, they did not prevent King James II. from running his bark ashore on the shoals of bigotry : neither are the recent examples of France any warning to some nobles of our land, how they hazard the shipwreck of their all, on the sands of democracy. That our ancient constitution remained ; that a new constitution was not established at, or by, the *Revolution* ; is shown with great brilliancy by Charles Yorke, without the lights of parliamentary beacons.\* Our Chairman, by reading the statute book, by examining the Parliamentary Journals, had so refrigerated his powers of panegyric, that he speaks with languid eulogy of an event, which is certainly memorable in our annals, though not revolutionary in our jurisprudence.

§ 59. Yet do I consider *the Revolution* as *glorious* ; not because much was done ; but because little was done ; because none of the *old foundations* of our government were weakened, and none of the land-marks of the law were removed. I think *the Revolution* ought to be deemed *glorious* ; because it was achieved by

\* Confid. on the Law of Forf. p. 110—112.



the good sense of Englishmen ; because the Parliament sat quietly, and voted independently, what necessity demanded, and wisdom approved ; because, when a mob presumed to interpose with premature tumult, King William signified to the mobbish chiefs, that he would not accept a scepter from such mean hands. From these views of the event, I am led to concur with our Chairman, in his reiterated eulogy on *the Revolution*,\* rather than with the vain clamour of *idolizers* ; regarding *the thing*, more than *the name*, as one of those master-movements in mechanics, which gives motion to vast machinery, by the turning of a pivot.

§ 60. By his love of *peace and quiet*, by his approbation of the *good sense* of Englishmen, is our Chairman induced to confer similar praises ON THE REFORMATION. Were we to credit the voice of party, we should be apt to believe, that he had equally maligned *the Reformation*, as he had *the Revolution*. Let it be remembered, however, that——

———“ We must not flint

“ Our necessary actions, in the fear

“ To cope malicious censurers.”

\* Thoughts, 40—43.

§ 61. But, let us hear his own voice, as he speaks out in page 25 :—" Those memorable transactions were conducted in a way, that was truly English ; the actors in them proceeded with their remedy, as far as the disease reached ; and they never suffered themselves to lose sight of this main rule, that what they did was to preserve the ancient government, and not to destroy or alter it." He praises with the loud voice of WARBURTON the *alliance*, which was thus formed, between the *church* and *state*, for the mutual advantage of both, and for the *better protection of the subject*.\* Not content with this reiterated praise of *the Reformation in ENGLAND*, our Chairman immediately subjoins a still greater eulogy : " It is a master-piece of temper and good sense, and will ever remain an example, among several others, of the great wisdom shewn by our churchmen, and the services they have done, at different times, towards preserving our ancient constitution." He might have added, what seems, indeed, to have been passing in his mind, that it was the *seven bishops*, who manfully defended the breach of *the constitution*, when it was, in 1688, sapped by stratagem, and attacked by violence ; that it was *the*

\* See Thoughts, p. 26.

*church of England*, which maintained the citadel of the constitution, when it was given up by *the Dissenters*, for an *indulgence*, which was as illegal, as it was insidious. He might have spoken out with MILTON :—

“ Best of fruits, whose taste has taught

“ The tongue, not made for speech, to speak thy praise !”

§ 62. But, he was carried out, by the nature of his subject, into the less grateful fields of censure. He was thus led \* to contrast the striking success of *our Reformation*, with the similar proceedings of our neighbours, in the difficult work of reform. It ought to be deemed his infelicity, rather than his crime, that he found in the reforming conduct of France, of Holland, of Geneva, and of Scotland, much more to blame than to celebrate. The praise of moderation and wisdom, which he had before bestowed on the *English Reformers*, he again repeated, when he beheld the sad confusion in the sister kingdom, where the people took into their own hands the affair of reformation, that ended in the subversion of things sacred, and in the overthrow of things civil. In the midst of this confusion, he congratulates the church of England, that the English Reformation had been ac-

\* Thoughts, p. 27.

complished with all the forms of law, in a Parliamentary way.\* Whether those censures of *foreign* reformation, when contrasted with the celebrity of the *English* reformation, be a libel, while the purpose plainly is, the inculcation of wisdom, by monitory examples, must be left to the moon-eyed censors of the Whig Club.

§ 63. In reviewing our Chairman's account of the *Tartuffe's*, the *Calvin's*, the *Arminius's*, the *Knox's*, I think, I can trace him poaching, where POPE had poached before, in the *prefaces* of DRYDEN. Strange to tell, the whole story of those reformers is better told, and the dangers of innovation are more vividly painted, in the poet's preface to his RELIGIO LAICI, than in our Chairman's *Thoughts*. After charging the sectaries, and the republicans, with "their odious doctrines of king-killing, and deposing," the illustrious bard thus concludes his elegant philippic, as, indeed, our Chairman might say: "They may think themselves too roughly handled in this paper; but I, who know best how far I could have gone on this subject, must be bold to tell them, they are spared; though at the same time, I am not ignorant that they interpret the mildness of a writer to

\* See *Thoughts*, 27—31, 32.

" them,



“ them, as they do the mercy of the govern-  
 “ ment; in the one, they think it fear, and  
 “ conclude it weakness in the other. The best  
 “ way for them to confute me is, to disclaim  
 “ their principles, and renounce their practices.  
 “ We shall all be glad to think them true Eng-  
 “ lishmen, when they obey the King, and true  
 “ Protestants, when they conform to the church  
 “ discipline.”\*

§ 64. It has been judicially determined in  
 Westminster-hall, I think, that it is lawful to  
 abridge, to review, and even to abuse a book, if  
 it be done under the form of criticism. Whe-  
 ther plagiarism, and poaching in prefaces, come  
 within this rule, I pretend not to know, though  
 it may be admitted, that general custom consti-

\* Dryden, who was plainly then a *true protestant*, what-  
 ever he might be afterwards, has this remark, among  
 others, in that curious preface:—“ A man may be suf-  
 “ fered to quote an adversary to our religion, when he  
 “ speaks truth; and it is the observation of Maimbourgh,  
 “ in his *History of Calvinism*, that wherever that disci-  
 “ pline was planted, and embraced, civil war and misery  
 “ attended it. And how, indeed, should it happen other-  
 “ wise? Reformation of church and state has always been  
 “ the ground of our divisions in England.” There are  
 some salutary warnings against the danger of innovations,  
 religious, and political, in Herbert’s *Life of Henry Eighth*,  
 and in Hayward’s *Reign of Edward Sixth*.

tutes undoubted law. It is a more difficult case to decide, whether the re-publishing of Dryden's animadversions on foreign reformers, who disturbed the world with their zeal, two centuries ago, comes within the line of parliamentary crimination. I will only say, with Bishop Andrews, "I have no skill to judge of parliamentary cases."\*

§ 65. From scoffing at foreign reformers, from ridiculing the idolizers of a fantastic revolution, our Chairman naturally proceeds to satirise the talkers about a *constitution*, which exists, but where, the tattlers cannot tell. He was thus led, by his purpose to laugh at men "of vinegar aspect," to add: "The government we know;—and the laws we know;

\* The case of Baron Weston, who was impeached, though not prosecuted, by the parliament of 1680, on a similar charge, is curiously reported by Roger North, in his *Examen*, 566. Weston is said by him to have *ranted*, at the Kingston assizes, against Zuinglius, and Calvin, and their disciples, for their restless spirit. In his heat, he added, "He knew no representative of the nation, but the king; all power centers in him."—From this report we see, that the judge *ranted* about graver matters, than the fanatical theories of foreign reformers; and, by meddling with forbidden matters, justly subjected himself to parliamentary animadversion, while the parliament was in a temper to censure slighter faults.

“—but, *the constitution*, we know not: it is  
 “an unknown region, that has never been vi-  
 “sited but by dreamers, and men, who see  
 “visions.”\* But, when he has, in this man-  
 ner, “laughed like a parrot at a bagpiper,” he  
 subjoins in a graver tone, “the *English govern-*  
 “*ment* is real, and substantial, we see and feel  
 “it; we can take its height, and its depth;  
 “and we know its movements; because they  
 “are regulated by known and established laws.  
 “This is the only constitution, ever supposed,  
 “or named, by men of sober minds, and sound  
 “understandings; that is, *the constitution of*  
 “*our government*, or *the constitution established*  
 “*by law*.” Such is the consecutive context!  
 Our Chairman’s whole *mind*, either to ridicule,  
 or to reason, is so fully exposed to the reader’s  
 judgment, that they must be willing critics,  
 who can cavil, or they must be unconstitutional  
 lawyers, who can convert the motive, the mat-  
 ter, and the manner, into libel.

§ 66. Yet, shall we meet men, who will  
 “hesitate dislike;” *disguised cheaters*, who will  
 suspect some “snake in the grass;” and some  
 learned jurists, who will conceive the *doctrine*  
 of the *constitution* to be *new*, and therefore un-

\* Thoughts, p. 57.

justifiable. *Suspensions, amongst thoughts, saith BACON, are like bats amongst birds, they ever fly by twilight. Certainly they are to be repressed, or at the least, well guarded: for, they cloud the mind, they lose friends, and they check business: they are defects not in the heart, but in the brain.*

§ 67. Yet, in this *twilight* of knowledge, will I fly out with some suspicions; which dispose me to think, that the word *constitution* is not very old, either in our language, or our law. It is only once mentioned by Shakespeare, I think, to denote *temper of mind*; “no-  
“ thing in the world could turn so much the  
“ *constitution* of any constant man.”\* Daniel is, I believe, the first, who used the word *constitution* to signify *system of laws*:—

“ The Norman, conquering all by might,

“ Mixing our customs, and the form of right,

“ With foreign *constitutions*, he had brought.”

Yet, the word *constitution* is not mentioned in *Cowell's Interpreter*;† it is not recognised in *Selden's Titles of Honour*;‡ it is not to be found in *Blount's Law Dictionary*.§ Nay,

\* See Ayseough's useful Index to the words in Shakespeare: Stockdale's edition, in one volume.

† Edit. 1727. ‡ The first edit. 1614. § Edit. 1670.



strange to tell, the word *constitution* is not in the Index \* to the quarto edition of Blackstone's Commentaries : yet, it did creep into the Index of the eleventh edition, after we had been talking about it, and about it, upwards of twenty years !

§ 68. The rolls of parliament, and history, state it as a fact, which no power of fact can deny, that there was not any constitution introduced, at the epoch of the revolution, though our liberties were asserted, and declared ; nor, any new form of government thought of, except by republicans and levellers. The position of our Chairman is not, then, unjustifiable, either in point of fact, or in principle of law. His point and his expression are warranted by Sir Humphry Mackworth, who having dedicated his *Vindication of the rights of the Commons* to the Speaker and the Members, may be supposed to speak the sentiments of the whole assembly. In his Dedication to King William, he speaks of the *happy constitution of the established government* ; in his Dedication to the Commons, he avows his great veneration for every part of “ the constitution of the government of England ; ” he declares in his Preface his object was “ to demonstrate the nature

\* Edit. 1769.

“ of the constitution of the government of England.” Here, then, is a *precedent* for our Chairman’s expression of *the constitution of our government*. And Charles Yorke gives a confirmation of his phrase, when he speaks of the *form of government, of the constitution of government*.\* The *fact*, which will over-rule all criticism, certainly is, that when any one predicates of, and concerning, *the constitution*, much must be implied, and understood, before we can understand distinctly, in which sense, of the *seven senses*, that the word *constitution* has, in the English language, he means to speak, or write. There is a charm about the *happy constitution of the English government*, which has detained us thus long, in its exposition, from attending to meaner matters.

§ 69. From considerations, with regard to *the revolution*, and *the constitution of our government*, our Chairman carries his attention to *party*, which must ever exist in it, while it has freedom, for its end. He sketches the history of the *whig-party*, whose principles, and practices, he is puzzled to appreciate. In an evil hour, for his own quiet, he traces *the ins* and *the outs* of that party, from the revolu-

\* Consider. on the Law of Forf. 111-112.

tion, till the *late rent*, which left the *whig club*,

“A motley mixture of long wigs, of bags,

“In silks, in crapes, in garters, and in rags.”

He is induced, by the spirit of his Association, to expose their design of corrupting the minds of men, on the subject of our government and laws, and of fermenting the disorders, which are incident to times of innovation. Yet, must Bacon be allowed to have gone beyond our Chairman in depth of discernment, justness of narrative, and utility of moral. “AMBITION,” saith BACON, “is like *choler*, which is an humour, that maketh men active, earnest, full of alacrity, and stirring, if it be not stopped. “But, if ambition be stopped, and cannot have his way, he becometh adust, and thereby malign, and venomous. So, ambitious men, if they find the way open for their rising, and still get forward, they are rather busy, than dangerous. But, if they be checked in their desires, they become secretly discontent, and look upon men, and things, with an evil eye; and are best pleased, when things go backward.”

§ 70. Yet, our Chairman, in his constitutional zeal, does not aim his animadversions at all whigs, but at some whigs; at the *old* whigs, but the *new* whigs; at the former  
whig

whig club, but the present whig club. Now, it cannot be denied, that *time* has *innovated*, as *Bacon* would say, upon the whig party, as it has greatly, but gradually, upon things of more stability. The very epoch of the separation of the *modern* whig from the *old* whig, during Queen Anne's reign, is clearly ascertained.\* The differences, as to principle, and practice, between the old whigs and the modern whigs, might be clearly developed, if the benefit would repay the trouble. A few examples shall suffice, for the present. The old whigs were against innovations in the constitution of our government: the new whigs are for innovations in it: the old whigs were for supporting the balance of power in Europe, as of great importance to the weight of England: the new whigs are against any balance of power, except—in their own club:—the old whigs were for a *barrier* in Flanders, as a *defence* to

\* See a curious pamphlet, entitled, *The Old Whig and Modern Whig revived, in the present divisions*, printed for Baker, in 1717.—In page 11, the author says, “It would be too long to enter here into the complete history of this breach: the whigs, that were out of place, in obedience to the curse upon man's nature, could no more see their own cause carried on, without having a hand in the profit, as well as honour of the management, than they could submit to the administration of their enemies.”

England:



England: the new whigs are for peace, at any loss of balance, barrier, or defence, to England: —the old whigs were *patrons* of *free discussion*: —the new whigs are *persecutors* of free discussion. If the principles of the new whigs have been misunderstood, or their practices mistated; it might be well for some of the great writers of the whig club to publish an exposition of both. Our Chairman speaks sarcastically of the present Whig Club only, as the *refuse* and *rump* of the old. His brevity is alone chargeable for his want of commentary. His etymology does not explain what he meaneth by *rump*, as applied to a club. Were he pressed upon the point, he might perhaps say with Charles Yorke, *The law will give no answer, but history will.*\*

\* I find in the preface of a book published in 1660, the following account of this notorious word *rump*:—  
 “ Now, if you ask, who named it *rump*, know it was  
 “ so stiled in an honest sheet of paper called the *Bloody*  
 “ *Rump*, written before the trial of our late sovereign:  
 “ but the word obtained not universal notice till it flew  
 “ from the mouth of Major-general Brown, at a public  
 “ assembly, in the days of Richard Cromwell.” See  
 “ *The Rump*: or a Collection of Songs and Ballads,  
 “ made upon those who would be a parliament, and  
 and were but the rump of a House of Commons, five  
 times dissolved;” printed for Brome and Marsh, 1660.

§ 71. In fine, I now submit to the candid reader the few examples, which I promised to state, of proceedings relative to the violation of the constitutional right of free discussion. I thought it to be my duty, having with every Englishman interest in that right, to vindicate that privilege of the people, with such arguments, as my weak intellect could furnish, and my hasty pen could scribble. I concur with our Chairman, in trusting what I have said to the *good sense* of the English people; and in admiration of the constitution of government, as by law established. With the Lord Chief Justice Wills, I presume to think, that it is the duty of every one, however weak his efforts, to defend it. And, with Blackstone, I will conclude: "To sustain, to repair, to beautify  
 " this noble pile, is a charge entrusted principally to the nobility, and such gentlemen of  
 " the kingdom, as are delegated by their country to Parliament. The protection of the  
 " LIBERTY OF BRITAIN, is a duty which they  
 " owe to themselves, who enjoy it; to their  
 " ancestors, who transmitted it down; and to  
 " their posterity, who will claim at their hands,  
 " the best birth-right, and noblest inheritance  
 " of mankind."



HISTORY

